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THE STATUS OF DISABLED PERSONS

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THE STATUS OF DISABLED PERSONS

ISSUE DEFINITION

In October 1992, Statistics Canada released the preliminary results of its second Health and Activity Limitation Survey (HALS) 1992, a follow-up to the 1991 census. Combining these results with those from HALS 1986, gave Canada a substantial amount of comparable data to guide the country in the formulation of public policy. The conclusions are obvious: the absolute number of Canadians who have identified themselves as disabled grew by 900,000 disabled people between 1986 and 1991 (to 4.2 million in 1991 from 3.3 million in 1986). Apart from this, the percentage of the Canadian population with disabilities has shown a proportionate increase; it went from 13.2% in 1986 to 15.5% in 1991. Analysts of the HALS data attribute the increase to a higher number of respondents who reported a mild disability, an increase in the aging population, and a change in survey methodology. As well, an increased awareness of disability in recent years may have made people more willing to give related information. While disability rates for all age groups have increased, the rate continues to be highest for those over 65.

Disability Rates by Age Group, Canada 1986 and 1991

	Disability 1991	Rate 1986
Total - All Ages	15.5	13.2
0-14	7.0	5.2
15-34	8.0	5.7
35-54	14.0	11.7
55-64	27.1	26.1
65 and over	46.3	45.5

The availability of this type of information is strengthening the movement to improve services, facilities and opportunities for Canadians with disabilities, a movement

which is receiving widespread public and political support. Especially since 1981, which the United Nations declared the Year of Disabled Persons, there has been a growing recognition of disabled people as voters, consumers, employees and taxpayers.

Laws and social policies are gradually changing, but disabled persons remain on the fringes of society. Too often, because of a persisting attitude that all individuals with disabilities must be "taken care of," they are given welfare and disability pensions when it might be more appropriate for them to be given jobs.

Of course, some disabled people will never be able to work, but advocacy groups argue that many more would be able to enter the labour market if governments more assertively promoted job training and counselling, the subsidization of special equipment and the enforcement of equal wages and employment equity. These groups also argue that disabled people could become independent of their families or institutions if more attention were given to making buildings, sidewalks and public transportation more accessible to them. Instead of wanting to be protected, disabled Canadians are asking for the opportunity to exercise their rights and to participate fully in society.

BACKGROUND AND ANALYSIS

A. Definitions of Disability

Problems of defining "disability" arise when the focus of the definition shifts from an individual's medical situation to the rights of disabled persons in areas such as employment or social benefits.

The World Health Organization (WHO) definition uses impairment as a generic term which embraces any disturbance or interference with the normal structure or functioning of the body. It is characterized by a permanent or transitory psychological, physiological or anatomical loss or abnormality. *Disability* is defined as the loss or reduction of functional ability and activity caused by impairment. *Handicap* is a disadvantage, either social or environmental, arising from impairment or disability. It is clear from these terms that an "impairment" does not necessarily lead to a "disability" or a resulting "handicap," which implies the loss or

limitation of an individual's opportunities to take part in the life of the community on an equal level with others.

The WHO definition is inadequate for many uses because it does not fully recognize that disability is part of the wider problem of distributive justice that goes beyond individual medical criteria. All societies have two systems for distributing income; one based on work and the other based on need. Each society must decide on its own definition of when an individual should not have to work and instead should be entitled to social aid. Given the implications for social justice, defining "disability" is not solely a technical or medical matter but a question open for political decision.

Of the concepts used as a basis for providing social assistance, "disability" is the vaguest (compared to "childhood" or "old age"); it also varies greatly from nation to nation. For example, the United States Social Security Administration defines disability as the inability to earn more than a yearly fixed amount. The Federal Republic of Germany cites the inability to earn according to an individual's educational qualifications or previous job; it also specifies that disability should not entail a significant decline in social status.

In Canada, provincial and federal jurisdictions have not come to any agreement on a definition of disability which moves the focus from individual medical problems to systemic social issues. Obviously, this definition will partly determine the size of the "disabled" population and therefore will have an important impact on the perceived need for relevant social programs.

In its HALS studies, Statistics Canada considered respondents disabled if they identified themselves as having trouble performing any one of 17 activities of daily living (e.g., walking up and down a flight of stairs), if they experienced a limitation in the kind or amount of activity they could do at home, work or school because of a physical condition or health problem, or if they had a mental handicap. In addition, they had to have been disabled for a period of at least six months. The target population of this study excluded those persons disabled solely because of psychiatric illness.

For purposes of employment, the federal government's *Employment Equity Act* and its Treasury Board Directives have used a variation of the WHO's definition. The federal government defines persons with disabilities as "those who, for the purposes of employment,

consider themselves, or who believe that a potential employer would likely consider them to be, disadvantaged in employment" by reason of any persistent physical, mental, psychiatric, learning or sensory impairment. To be reported under the Act, individuals themselves must identify their disability to an employer or agree to being identified as disabled by an employer.

Disabled persons unable to work derive their incomes from Workers' Compensation, the Canada Pension Plan, private pension plans and insurance settlements. While all these sources apply a definition of disability when assessing a person's entitlement, the qualifications for benefits are based on a multiplicity of criteria which often have little connection with the nature of the disability, but are rather based on when, how and where the disability was incurred.

B. Increased Profile of Disabled Persons

Recent demographic, legal, policy and attitudinal changes have led to a higher profile for disabled people. The United Nations declared the years from 1983 to 1992 as the Decade of Disabled Persons. The aging population is a factor in this higher profile, as is the increase in the population with disabilities because of medical breakthroughs. For example, medical technology is now able to keep alive many babies with developmental disabilities -- babies who would have died only a few decades ago; spinal cord injuries from serious accidents, especially prevalent among young men 18 to 30 years old, can now often be treated to some extent.

Debates over the applicability of the *Charter of Rights* to disabled people's integration into society and "employment equity" for access to paid work have also publicized the concerns of disabled people in Canada. Increased publicity is particularly apparent in the field of sports where achievements of wheelchair athletes have led to demands for their integration into international competitions.

Rick Hansen's "Man in Motion" tour raised popular awareness of physically disabled persons, and when completed in May 1987, had raised \$18 million (\$1 million from the federal government) for spinal cord research. Despite this, some disabled persons and consumer groups have criticized Hansen's tour, which, they argue, sets impossible

goals for other disabled people, detracts from the "real issues," and encourages the attitude that disabled people have to perform "stunts" in order to receive money for research.

In February 1988, a public opinion survey reported that Canadians believed that more progress had been made in providing access for wheelchair users than for those who are visually or hearing impaired. Respondents were asked whether they would agree to pay \$50 more in taxes so that buses could be accessible to disabled persons; 70% said that they would. Overall results showed that over 90% of Canadians would support affirmative action legislation for physically disabled persons. For persons with mental disabilities, the support was 78%. (Equal access legislation for women was favoured by 84% and for visible minorities by 72%.)

The first National Access Awareness week, sponsored by the federal government in conjunction with a group of major corporations, took place from 29 May to 4 June 1988. This annual series of events in communities across the country focuses attention on increasing public awareness of the need for improvement in the housing, employment, transportation, recreation and education of disabled people.

C. Evolution of Organizations of Disabled Persons

Increasing public awareness is due, in considerable measure, to the change in the orientation of many of the organizations dealing with disabilities. Bodies to assist special categories of disabled people have existed in Canada for many years. The Canadian National Institute for the Blind and the Canadian Association of the Deaf have been active since 1918 and 1948 respectively. Many of the earliest organizations provided services for disabled persons but were not directed by such people.

The traditional view of rehabilitation was of "the disabled" as patients or clients; the new philosophy is that persons with disabilities are themselves best able to define their needs and to direct the fiscal and human resources to respond to those needs. As a result, organizations led by persons with disabilities sprang up in the late 1970s as part of the "independent living" movement. The movement strives to integrate disabled persons as fully as possible into the general life of the community. The major exponents of this point of view include the Coalition of Provincial Organizations of the Handicapped (COPHO), the Canadian

Association for Community Living (CACL), the Canadian Association of Independent Living Centre (CAILC), the Advocacy Resource Centre for the Handicapped (ARCH) and the Disabled Women's Network (DAWN). All are strong advocates of an improved status for disabled people as consumers, employees and voters. In various cities across the country, disabled persons are establishing and running "independent living" centres to provide information, referral services, peer counselling advocacy and brokerage. Disabled Persons International, a cross-disability coalition of organizations of disabled people providing resources and directions to promote self-employment of such people, with special emphasis on the Third World, receives significant support from the Canadian government.

D. Evolution of Major Issues

1. General

Access to services and facilities remains a problem for disabled people in this country. Those with physical disabilities appear to be better protected from discrimination than those with psychiatric handicaps but barriers remain to the full integration of all disabled into the community. These barriers are often architectural -- such as lack of wheelchair ramps, adequate doorways or signs that people with visual impairments can read by touch. During elections, if persons with disabilities cannot, or are not allowed, to enter the polling station or read the ballot, they are prevented from exercising their citizenship rights. There are also barriers to education -- a lack of books available on tape or braille for people who are blind, and scarcity of sign language services or amplification devices for those with hearing impairments.

While "retrofitting" or making facilities accessible is often costly, advocacy groups claim that governments instead spend millions on disability pensions for people who would prefer to work and on institutions for those who with certain services could live independently.

2. Social Programs and Services

Prior to the First World War, elderly, poor and disabled Canadians were forced to rely for assistance on their families or private charities. Disabilities incurred during the Great War emphasized the need for federal legislation and in 1919 war veterans were provided with

disability pensions, whose coverage was expanded in 1930. Prior to the Second World War, legislation such as that introduced in 1918 for disability and death benefits for federal employees injured or killed on the job, tended to focus on disability pensions, survivor benefits and rehabilitation programs.

With the development of social security legislation in the decades after 1945, the Canadian government provided a variety of social insurance programs, laws to protect workers and citizens from hazardous materials, from potential injuries and from discrimination. As well, it entered into cost-sharing arrangements with the provinces for hospital and medical care, welfare and rehabilitation. (Federal legislation in this area is described in more detail under Parliamentary Action.)

Some federal legislation, such as that in the area of human rights and workers' compensation, has complementary provincial legislation. All Canadian provinces, however, have their own laws dealing with education, rehabilitation, integration, income maintenance, and social assistance. Current trends in provincial legislation for disabled persons emphasize human rights and income supplementation. Although legislation is also being expanded to facilitate integration into the community, controversies still exist: over the integration of physically and intellectually handicapped children into the regular school system, access to provincial and locally-run transportation services, the legal rights of children with disabilities who need medical treatment, services for intellectually handicapped people, non-compulsory identification of vehicles used by disabled persons for parking and security reasons and sheltered workshops which pay less than the minimum wage.

In September 1988, the Ontario government's social assistance review committee made recommendations regarding the delivery of benefits to disabled persons. The committee urged the establishment of a national comprehensive disability insurance system that would rationalize existing income programs. This new system would be complemented by income-tested benefits for those who were not eligible for insurance and who had no other adequate source of income.

The Canada Assistance Plan and the *Vocational Rehabilitation of Disabled Persons Act* (VRDP Act) expired as federal-provincial agreements in 1986 and COPOH wanted the federal government to change these agreements substantially. For example, VRDP moneys now

going to finance underpaid labour in sheltered workshops could be rechannelled into projects to assist disabled people to become independent of welfare. Many advocacy groups further believe that sheltered workshops would rarely be needed if employment equity were enforced and other programs encouraged independent living. The VRDP agreements were renewed and the provinces and the federal government agreed to continue the review of the programs in consultation with the community.

In the fall of 1990, the Department of National Health and Welfare, in conjunction with the provinces, began a review of services to Canadians with disabilities. The review encompasses employment, community and independent living, income support and promotion/prevention with a view to recommending changes that fall within the current legislative framework.

A Private Member's bill (C-280) that would have changed the qualification requirements for disability pensions payable from the Canada Pension Plan was introduced by Alan Redway, M.P. on 20 September 1991. Because of procedural requirements, this was subsequently replaced by government legislation, Bill C-57, which was given first reading on 14 February 1992. The amendments, as passed by Parliament on 28 February 1992, mean that an individual with a handicap is not deemed disqualified if he or she does not make an application for CPP disability benefits within the required application period.

3. Employment

Independence for persons with disabilities will remain an unmet goal unless disabled persons can be assured of access to the opportunity to work. Education is an important factor in such access. Adults reporting a disability have a lower level of formal education than non-disabled adults. (Of all those with a disability, 44% have eight or fewer years of schooling, compared to 17% of the non-disabled population.) Since so many disabled people are able to find only temporary or part-time work, they are often ineligible for Unemployment Insurance, holiday and sick pay, and pension plan membership.

People with disabilities are not always given a chance to prove their disabilities on the job. Because of the inconvenience and cost, employers are often reluctant to alter the workplace by providing necessary equipment or adjusting work schedules for employees with

disabilities. Laws may not always cover certain jurisdictions or situations. In addition, the barriers to integration for disabled persons are often attitudinal: employers may assume that such persons will not be able to perform a particular job effectively; acquaintances may offer assistance but in a patronizing way which angers disabled persons or keeps them dependent.

The federal government has moved forward in several areas. Employment and Immigration Canada has developed an Employment Equity Branch, which includes a designated groups directorate and a senior adviser responsible for disabled persons. In response to the House of *Commons Challenge Report*, the federal government undertook in December 1987 to increase by 67% the number of disabled Canadians in the public service. The government will also spend \$3.7 million over five years on job training and providing technical aids. On 6 September 1989, Treasury Board announced that federal government departments will be required to provide attendant services for federal employees with severe disabilities. To ensure that departments respond, the federal government also announced a timetable for ensuring access to federal facilities.

The Minister of Employment and Immigration announced, on 10 November 1988, that the department would provide financial assistance to establish a Job Accommodation Network. This computerized data bank reached by a toll-free number will give employers access to trained consultants and information on job, worksite, and equipment accommodation for persons with disabilities.

When the first report under the *Employment Equity Act* was released in December 1988, employment information for 1987 for companies covered by the Act (see Parliamentary Action) became available for the first time. The report revealed that:

Persons with disabilities with jobs (1.6% of the total workforce) formed about one-third of all disabled people either working or available to work.

The average salary of men with disabilities nearly equalled that of other employed men. Women with disabilities, however, earned 4% less than other women in the workforce.

Over 50% of men with disabilities worked as semi-skilled, skilled employers or middle and other managers. Over 66% of women were in clerical positions (higher than the percentage of women in the workforce).

The three subsequent reports to Parliament, for the years 1988, 1989 and 1990, either demonstrated negligible improvements in the employment situation for workers with disabilities (1988 and 1990) or increases that were due mainly to a greater number of employees identifying themselves as limited at work rather than to new hiring (1989). Advocacy groups have claimed that most increases can be attributed to the improper and imprecise definitions of disability used by most employers. Over the first four years of the Act's implementation, the representation of persons with disabilities climbed from 1.59% to 2.39% (see Chart 1).

CHART 1

These results, however, reveal only one part of the picture. Figures for 1985-1986 indicate that the participation rate* of persons with disabilities was 37.7% compared to 74.8% for the total population between 15 and 64. Persons who reported limitations at work had a 20% unemployment rate compared to 10.7% for those who reported no limitations. This

* The participation rate is the labour force as a percentage of the whole cohort. The labour force is that portion of the civilian and non-institutionalized population 15 years and over who were "employed" or "unemployed" according to specific definitions of those terms.

could mean that a great number of disabled persons have given up any hope of finding a job or that their disabilities kept those people out of the labour force or that there is considerable discrimination being exercised against persons with disabilities.

Disability advocacy groups have taken action by lodging a complaint with the Canadian Human Rights Commission alleging discrimination in employment. This action reinforces the complaint by many groups that the 1986 *Employment Equity Act* has no enforcement mechanism to help disabled people find and keep permanent work. Lobby groups argue in favour of compulsory contractual compliance because, without continuing employment or higher disability pensions, independent living is not possible.

The employment equity issue also came before the Federal Court when four disability organizations jointly filed a statement of claim on 12 December 1990. The organizations sought judicial clarification of the definition of disability that employers use in applying the *Employment Equity Act*. The disability organizations asked the Federal Court to require the Minister to set out the correct definition of disability, to instruct employers to use it and to prosecute those who fail to do so.

When, in late March 1991, the federal government issued a new directive to employers on the definition of disability under the Act, the groups withdrew their legal action. Reacting to this in August 1991, two banks sought the court to review the definition because, they argue, it penalizes employers who are trying to remove barriers to disabled persons. (see also Parliamentary Action section)

4. Transportation

Advocacy organizations led by disabled persons have played a major role in agitating for accessible transportation for citizens with disabilities. As a result, Transport Canada adopted a policy on the transportation of disabled persons in 1983 and released a report on Air Accessibility for Disabled and Elderly Persons (Ratushny Report) in August 1984. Transport Canada is also attempting to renovate air and rail terminals to make them accessible to those with physical disabilities.

One issue involves the right of people with physical disabilities to travel without an attendant. In May 1985, a wheelchair user was denied access to an Air Canada flight because

she was deemed unable to travel alone. According to the federal government's transportation policy, such decisions about travelling without an attendant should ultimately be made by the carrier. Airlines argued in favour of retaining this right for safety reasons: people unable to disembark quickly without assistance could endanger others in case of emergency. Although some transportation companies insisted on charging two fares for a disabled person travelling with an attendant, advocacy groups argued that the decision about travelling alone or accompanied should be made by the disabled person. If he or she feels an attendant is needed, only one fare should be charged. In November 1986, the Canadian Transport Commission ordered Air Canada and other airlines to allow disabled passengers themselves to decide whether they are capable of flying unattended. A report from the Canadian Transport Commission recommended in December 1986 that federal regulations be amended to prevent air carriers from charging two fares for disabled passengers requiring attendants or for obese passengers.

As a result of amendments to the *National Transportation Act* (see Parliamentary Action section), the National Transportation Agency (NTA) may set standards to eliminate obstacles for persons with disabilities using federally regulated modes of transport (air, rail, marine and CN roadcruiser buses). The NTA may now regulate transportation and related facilities, premises and equipment, signs and communications, and staff training as well as terms and conditions of carriage. It may also investigate complaints of inaccessible operations, order corrective measures and compensation, and impose penalties. In late March 1992, the NTA asked for public comment on two sets of regulatory changes: first, the Air Transportation Regulations, which deal with terms and conditions of carriage, will specify how carriers using aircraft with 30 seats or more are to ensure uniform services to persons with disabilities travelling in Canada; second, the Personnel Training Regulations for the Assistance of Persons with a Disability will require carriers and owner/operators of transportation terminals under federal jurisdiction to provide appropriate training for staff who deal with persons with disabilities.

At the local level, there have been several recent developments. Vancouver became the first city in Canada to equip regular route, city buses with lifts. Within the next five years, 10% of the city's buses will be wheelchair accessible and by 2003 all buses will be accessible. On 11 June 1990, the Ontario government committed itself to making public transit

fully accessible. The province increased from 75% to 90% its share of funding to municipalities for incorporating accessible features into regular transit systems. In addition, the government agreed to retrofit 20 Toronto subway and GO rail commuter stations. Previously, in the fall of 1989, Ontario had inaugurated service on an entire inter-city bus route for a three-year trial.

At the September 1990 meeting of the Council of Ministers Responsible for Transportation and Highway Safety, the Hon. Doug Lewis raised the question of ensuring the accessibility of inter-city buses. If no progress is made by March 1991, the federal Department of Transport will examine the options for federal action under the *National Transportation Act*. In early June 1992, the NTA announced that the Minister of Transport had requested the agency to conduct an inquiry into the accessibility of interprovincial motor coach operations, the necessity of making the services accessible in accordance with a national standard and the financial implications of doing this.

5. Taxation

In October 1986, the federal government sent a new tax form to thousands of disabled Canadians asking for detailed information about their disabilities and personal habits. This tax form related to the expanded definition of disability announced in the 1985 budget, which allowed more disabled people to claim the \$2,800 disability exemption. After many complaints from disabled individuals and groups that the form was "intrusive, paternalistic and offensive," it was withdrawn. Advocacy groups objected to the whole idea of a special certificate to qualify for the tax exemption, which, they felt, should be treated like other tax exemptions and administered by Revenue Canada rather than by Health and Welfare. Finance Minister Michael Wilson announced on 3 June 1987 that he would expand the definition of medical expenses in the *Income Tax Act* so that the cost of medical aids would be tax deductible once expenses exceeded 3% of income in any year. These aids could include such devices as electronic speech synthesizers, braille printers and closed-caption decoders.

Consumer groups are also arguing for changes to the tax system which would provide tax credits for employment-related expenditures by persons with a disability. The groups are also urging tax incentives for employers who must undertake renovations in the workplace to accommodate employees with disabilities.

The Department of Finance has made several additional tax provisions for disability. In the 1988 budget the disability deduction was converted to a tax credit and enriched. Then, on 20 December 1988, the Department allowed tax deductions for certain home improvement costs for "individuals confined to a wheelchair." The 1989 budget presented in April made provision for a deduction of two-thirds of employment, training allowance, or grant income, up to \$5,000, for part of the cost of hiring an attendant in order to enable a person with a disability to work. The number of those taking advantage of the credit grew from 85,000 in 1985 to 410,000 in 1991.

In the budget, presented on 26 February 1991, the government introduced several changes: the disability tax credit was increased from \$575 to \$700; the definition of expenses eligible for the medical expense tax credit was broadened to include the cost of part-time attendant care in the home; costs incurred by employers in modifying their premises to accommodate disabled persons became fully deductible in the year in which they were incurred; and benefits provided by employers to disabled persons to enable or assist them to work were made no longer taxable.

The 1992 budget expanded the medical expense tax credit to include eligible expenses for visual or vibratory signalling devices and payments for rehabilitation for speech or hearing loss. To further assist in accommodating customers or employees with disabilities, businesses were allowed to deduct costs of position indicators for elevator cars, visual fire alarms, telephone devices for people with hearing impairments, listening devices for group meetings and disability-specific computer software and hardware. The education tax credit was extended to those people with disabilities who are enrolled in courses part-time, while CPP/QPP disability benefits can now be included in earned income for purposes of calculating contributions to Registered Retirement Savings Plans.

6. Rights and Court Challenges

Controversy is growing on the issue of the legal rights of disabled persons. Advocacy groups of disabled persons have argued for amendments to the *Canadian Human Rights Act* and,

in the interim, have formed the Canadian Disability Rights Council, which has recently begun a series of court challenges in attempt to clarify and improve the status of disabled persons.

In October 1986, the Supreme Court of Canada ruled that intellectually disabled persons cannot be forced to undergo sterilization for non-medical reasons. This decision was seen as a victory by advocacy groups for disabled persons, but as a setback by many of those who care for the severely intellectually-handicapped.

Another issue deals with "reasonable accommodation." Loopholes in the *Canadian Human Rights Act* have enabled employers or those providing public facilities or services to argue that they cannot modify their facilities or workplaces to accommodate disabled people because the renovations would be too expensive or are unreasonable considering demand for the services. Cases of alleged discrimination must be taken to the Human Rights Commission or fought in court under the *Canadian Charter of Rights and Freedoms*. Yet after expending the time, energy and money to fight a case, a disabled person may find that the law is so vague that it allows a narrow interpretation of "reasonable access" or focuses only on physical rather than mental disabilities.

Pressure on the federal government increased after April 1988, when the province of Ontario proclaimed amendments to its Human Rights Code. These provide for equal access to public facilities and state that anyone providing goods and services to the public must accommodate disabled persons. Where business and other public agencies can prove that providing access would constitute an "undue hardship," exemptions will be allowed.

Early in 1991, the province took other steps to deal with the question of systemic discrimination. In late January, investigators from the provincial human rights commission raided two major Toronto employment agencies looking for evidence of discrimination. Two weeks later, the province announced a \$25 million mandatory program to encourage employment equity and the appointment of an employment equity commissioner.

As the result of an unchallenged application by the Disability Rights Council, on 17 October 1988 the Federal Court of Canada struck down as unconstitutional a provision in the *Canada Elections Act* which denied the right to vote to anyone "who is restrained of his liberty of movement ... by reason of mental disease." This gave the right to vote to approximately 50,000 patients in institutions across the country. Following the November 1988 general

election, the Canadian Paraplegic Association announced that it would seek a court ruling to ensure that all polling places would be accessible to persons with disabilities.

That same month, another coalition of advocacy groups, Disabled People for Employment Equity (DPEE), filed a complaint with the Canadian Human Rights Commission against nine federally-regulated corporations. It alleged that reports filed by these companies under the *Employment Equity Act* showed that of the 13,000 permanent, full-time positions filled in 1987, only 94 had gone to disabled persons. This complaint, the first filed under the equity legislation, accuses the corporations of discriminating against persons with disabilities. One of the companies, the Canadian Broadcasting Corporation, refused the request of the Canadian Human Rights Commission to cooperate in a joint voluntary review. The CBC asked the Federal Court of Canada to prevent an investigation of its hiring procedures because it argued that its case had been prejudged by the Human Rights Commission.

On 20 January 1989, the New Brunswick Court of the Queen's Bench ruled that school boards must provide educational plans and support services so that disabled children can attend regular school classes. Three days later, a lower court in Ontario issued a temporary order, pending appeal, to give a child with disabilities the right to enter a sports tournament. Further attempts at integrating mentally-handicapped children into the regular school system led to other court actions throughout the country. Confronted by a challenge under section 15 of the *Charter of Rights and Freedoms*, the government of Ontario withdrew its support for segregated classrooms. This signalled a provincial decision to shift the balance towards giving parents a greater choice in providing education to children with mental handicaps.

The Canadian Human Rights Commission released a report, *Unequal Access*, on 18 December 1990. The Commission found that federal offices have a long way to go before they meet accessibility standards, not just for those with mobility impairments but also for people with hearing or sight impairments.

Increasingly, people with mental or psychiatric disabilities and handicaps have been challenging current laws and practices. In January 1991, the Quebec Human Rights Commission made the first human rights award for group exploitation. The Commission ordered one privately-owned, government-financed home for persons with mental disabilities to pay its residents \$1 million to compensate for humiliation, indignities and financial loss. In July 1991,

the Supreme Court of Ontario struck down a provision in the province's *Mental Health Act* that allowed doctors to administer anti-psychotic drugs against the wishes of patients in psychiatric institutions.

On 2 May 1991, the Supreme Court of Canada found unconstitutional the *Criminal Code* provision that automatically confined people who were declared not guilty of a crime by reason of insanity. The Court ordered that the current legislation be altered within six months. In September 1991, reacting to the decision, the Minister of Justice introduced Bill C-30, which proposed to amend the *Criminal Code* by replacing the verdict of "not guilty by reason of insanity" with the verdict of "not criminally responsible on account of mental disorder." Bill C-30 became law on 13 December 1991. The insanity defence itself is substantively unchanged. The changes affect the concept of mental disorder within all parts of the criminal process, including the question of fitness to stand trial and the use and consequences of the insanity defence, while seeking to ensure that the right to liberty is not arbitrarily limited. The amendments also require each province to have a review board with the responsibility for making and reviewing dispositions. The review board must meet within 90 days of the court decision on holding an individual found to have committed a crime while insane. Where a court does not make a disposition, the review board is required to hold a hearing and make a disposition within 45 days of the court's finding that the accused is unfit to stand trial or is not criminally responsible on account of mental disorder. Further, an individual may not be held indefinitely without a mandatory review.

7. Deinstitutionalization and Independent Living

In several provinces, concern has grown about the low priority given to mental health funding compared to physical health funding. Because of budget cutbacks and policy trends, many hospitals and residential care institutions have been releasing mentally and psychiatrically disabled patients faster than community services can be provided. In Quebec, for example, there are 10,000 people in institutions compared to 20,000 two decades ago. As well, advocacy groups have attempted to move intellectually disabled people out of sheltered workshops and into competitive jobs. Changes in Ontario government policy were announced in 1986 to prohibit the use of electric "cattle prods" and to limit drug therapy and use of

straitjackets for patients in residential care. In May 1987, additional programs were announced to help developmentally disabled people to remain in the community. In the fall of 1989, Quebec law gave mentally disabled adults and their families a bigger role in making decisions about care. On the other hand, at the end of November 1988, the government of Manitoba introduced amendments to the provincial *Mental Health Act* which would restore to medical authorities the right to treat mental patients against their will.

In Alberta, a committee chaired by Roy Brassard, M.L.A., reviewed services and facilities for persons with mental disabilities. In late 1989, the Brassard Report set out various recommendations to enable people with mental disabilities to claim their fundamental rights. The report concluded with a recommendation that a task force develop a provincial Persons with Disabilities Act.

Early in October 1988, the federal government announced that it would provide \$1 million over five years to promote the closing of institutions for mentally disabled people. The money is earmarked to assist the Canadian Association for Community Living to discuss with provincial governments the best means of deinstitutionalizing persons with mental disabilities and integrating them into the community. A year after a provincial task force recommended changes in the system of mental health care, the government of Quebec announced an addition of \$32 million over four years to the \$520 million budget for mental health. Regional health councils are to coordinate plans developed by patients, committees, community groups and institutions for integrating persons with mental handicaps into society. In June 1989, the province of British Columbia announced a \$14.7 million program to assist parents with the expenses of raising severely disabled children at home.

For those who are physically disabled, the issue of independent living has involved their right to hire and to direct the attendants required to help them live outside an institution. In May 1990, the Ontario government announced that it would provide money directly to those who wished to hire their own attendants and allow them to purchase the services that they need.

8. Immigration

Throughout the past few years, an increasing number of complaints and legal actions have been brought by families of disabled persons regarding rules keeping disabled

children from immigrating to Canada with their parents. Section 19 of the 1976 *Immigration Act* states that persons who have "any disease, disorder, disability or other health impairment" are inadmissible because they might cause "excessive demands on health or social services." Under current procedures, Health and Welfare Canada sets the criteria that determine which disabilities fall under section 19. Immigration officials base approval or rejection of applications from disabled people on medical reports. The Department of Immigration, however, regularly allows disabled people to remain in Canada by granting a special "Minister's permit" on humanitarian and compassionate grounds. In March 1989, the Canadian Human Rights Commission took action against the Department of Immigration for discriminating against a man with scoliosis. Advocacy groups of disabled persons have been arguing that section 19 of the *Immigration Act* contravenes the *Canadian Charter of Rights and Freedoms*.

On 16 June 1992, the government introduced Bill C-86, An Act to amend the Immigration Act, which would alter section 19(1)(a) by eliminating the references to "disease," "disorder," and "disability." Bill C-86 also would also require that "excessive demands" be interpreted as falling "within the meaning assigned to that expression by the regulations on health or prescribed social services." The proposed amendment would also provide for a requirement for conditions that would allow terms of residence to be prescribed in order that adequate health or social services can be provided (section 114(1)(ii)3).

In considering these amendments, it is important to note that if the courts were to find the effect of section 19 to be discriminatory, merely eliminating its language regarding disability would not ensure compliance with the *Charter of Rights and Freedoms*. Furthermore, as it currently stands, the *Immigration Act* already provides that regulations may set out the factors to determine whether a person would cause (or might reasonably be expected to cause) excessive demands on health and social services. Since section 22 of the existing Regulations sets out these standards, the amendment may do nothing more than direct the attention of the medical officers who decide the question of excessive demands to the current Regulations. With regard to prescribing the terms of reference in section 114(1)(ii)3, the issue is whether the restriction contravenes section 6(2) of the Charter, which guarantees a choice of residence in any province to any permanent resident.

9. Coordination of Federal Policy

Groups of disabled people often find that they are shuffled from one government department to another when they attempt to find out about services or their legal rights. The only centralized structure for coordinating relevant federal government programs is the Secretariat for the Status of Disabled Persons in the Department of the Secretary of State. The Secretariat was established in 1985 as a response to the report of the Special Committee on the Disabled and Handicapped and given the mandate to develop federal policy on disabled people, to analyze and monitor government initiatives and to consult with the private and volunteer sectors. It has, however, no statutory enforcement powers. Currently, the Secretariat reports through the Minister responsible for the Status of Disabled Persons who is also the Secretary of State and is housed in that department. The mandate of the Secretariat and the Disabled Persons Participation Program, which provides grants to advocacy groups.

10. National Strategy for the Integration of Persons with Disabilities

The Prime Minister launched the National Strategy for the Integration of Persons with Disabilities in Winnipeg on 6 September 1991. With this commitment, the federal government dedicated \$158 million to be spent by ten federal departments over five years. The Strategy aims to assist in bringing people with disabilities into the social and economic mainstream of Canadian life.

Following the Prime Minister's announcement, the various departments and agencies set out the details of their components of the strategy:

- The Secretary of State, through the Status of Disabled Persons Secretariat, will take the lead role. Of the \$38 million to be spent by the Department, \$14 million is for the Disabled Persons Participation Program; \$17 for a new partnerships fund; and \$7 million for the Secretariat to establish a national clearing house for information.
- The Department of National Health and Welfare is responsible for providing \$46 million to review services, develop pilot projects to help persons receiving disability pensions to

re-enter the workforce, and to foster the integration of disabled children, youth and adults into daily living.

- Transport Canada will provide \$24.6 million in financial incentives for the transportation industry to improve accessibility for travellers.
- The National Transportation Agency began to conduct an inquiry into the availability and accessibility of ground transportation equipment and services at Canadian airports.
- The Departments of Indian Affairs and Northern Development and National Health and Welfare announced \$8 million to assist aboriginal people with disabilities.
- Labour Canada created a \$2 million fund for workers with disabilities.
- The Department of Communications created an advisory committee on communications for persons with disabilities.
- Fitness and Amateur Sport announced it would spend \$4 million to expand the opportunities for disabled Canadians to participate in physical activities and competitive sport.
- The Canada Mortgage and Housing Corporation announced a \$13.2 million initiative for assistance to low-income seniors to improve the accessibility of their homes and for increasing research and development in barrier-free design and construction techniques.

PARLIAMENTARY ACTION

Some legislation of particular interest to disabled persons includes cost-sharing with the provinces for hospital and medical care under the *Hospital Insurance and Diagnostic Service Act* (1957) and the *Medical Care Act* (1966) and for rehabilitation under the *Vocational*

Rehabilitation of Disabled Persons Act (1961). The Canada Pension Plan (1966) has provided disability benefits for contributors injured and unable to continue working. In 1981, disability was included as a prohibited ground of discrimination in the *Canadian Human Rights Act* and in the *Canadian Charter of Rights and Freedoms*.

A turning point for disabled people's rights was 1981, the International Year of Disabled Persons. In preparation for this, Parliament in 1980 established a Special Committee on the Disabled and the Handicapped, chaired by David Smith, M.P. In February 1981, the Committee produced *Obstacles*, containing 130 recommendations. The federal government initially responded to this report in 1981, and again in 1982, 1983 and 1985.

In October 1984, the Royal Commission Report on *Equality in Employment* (chaired by Judge Rosalie Abella) suggested concrete ways of assisting disabled people, as well as women, native people and visible minorities, to achieve employment equity.

The Standing Committee on Communications and Culture, in May 1985, established a Sub-Committee on the Disabled and the Handicapped chaired by Patrick Boyer, M.P. The mandate of the sub-committee was to monitor government progress in implementing the recommendations of the *Obstacles* report as well as improvements to the status of disabled persons in the wider society.

The report of the Parliamentary Committee on Equality Rights (also chaired by Patrick Boyer, M.P.) was issued in October 1985 and contained two chapters on disabilities, adding further support to the *Obstacles* report and more visibility to the concerns of disabled persons. The Minister responsible for the Status of the Disabled Persons promised in December 1985 to commit \$16 million over the next five years to assist the disabled to participate more fully in Canadian society.

More recently, the *Employment Equity Act* (June 1986) required employers under federal jurisdiction and with 100 or more employees, to report by 1 June 1988 on the hiring and promotion of visible minorities, women, Native people and disabled persons. The first report to Parliament was tabled in December 1988. The law still places the onus on the employee to complain to the Human Rights Commission, however, if an alleged case of discrimination occurs in the workplace.

On 30 October 1991, as required by the *Employment Equity Act*, the House of Commons established a Special Committee to conduct a comprehensive review of the provisions and operations of the Act. In its report *A Matter of Fairness*, tabled on 14 May 1992, the committee made a number of recommendations to meet the concerns of persons with disabilities: that employers covered under the Act should include the federal public service and other government agencies as well as some other private sector employers; that the definition of "persons with a disability" be clarified; and that reporting be in a standardized format. The committee also proposed a National Employment Equity Strategy that would include an examination of the barriers to employment that exist for persons with a disability.

Changes to the Canada Pension Plan were introduced in June 1986; they increased disability benefits by \$150 a month from January 1987 and eased eligibility rules. Some disabled welfare recipients have found that their welfare cheques have been lowered by the provincial governments as a result of their increased income. The federal government partly rectified this situation by declaring the pension non-taxable. Although a new mental health Act was discussed prior to the dissolution of Parliament in October 1988, many groups disagree with the proposed conditions under which a person could be forcibly admitted to a psychiatric hospital.

On 21 January 1987, the Speaker of the House of Commons presented to the Parliamentary Sub-Committee on the Disabled and the Handicapped a model report aimed at increasing the numbers of disabled persons working on Parliament Hill and improving access to the Parliament Buildings. The House of Commons Sub-Committee produced its first report (*Challenge. Putting Our House in Order*) on 2 April 1987. This requested all government departments to issue a report within 60 days on how they were meeting the needs of disabled employees and clients.

In keeping with recommendations from the Sub-Committee, on 30 June 1987 the House of Commons announced the creation of a permanent Standing Committee on the Status of Disabled Persons.

Bill C-79, to amend the *Elections Act*, was given first reading on 30 June 1987. Proposed amendments would have required accessible polling stations, allowed for mobile polls for institutions and removed the voting disqualification from mentally and psychiatrically

handicapped persons in institutions. The legislation died when Parliament was dissolved in the fall of 1988.

Parliament passed amendments to the *National Transportation Act* (July 1988) to permit the National Transportation Agency to require increased accessibility to federally-regulated modes of transport for disabled persons.

The Standing Committee on the Status of Disabled Persons tabled its first report, *No News is Bad News*, in the House of Commons on 18 August 1988. This report made 27 recommendations on access to the media by persons with disabilities and on their depiction by the media. Because of the dissolution of Parliament, the government was not obligated to provide a formal response to the Committee's report. Some recommendations, however, have been implemented. In mid-October 1990, the Canadian Radio-television and Telecommunications Commission issued a licence to establish an "audio newsstand," a national 24-hour radio news-reading service for those who are visually impaired.

In April 1989, at the beginning of the second session of the 34th Parliament, the House of Commons amended its Standing Orders and gave responsibility for human rights and disabled persons to a single standing committee of the House. The mandate of the Committee on Human Rights and the Status of Disabled Persons combined the mandates of the two previous committees.

In June 1990, the Committee, chaired by Dr. Bruce Halliday, M.P., tabled a report, *A Consensus for Action*. This is the first of a projected series of reports on the economic integration of disabled persons. *A Consensus for Action* recommends that the government take several concrete steps to formulate a national strategy for resolving long-standing problems. The formal response of the government to this report was tabled in the House on 8 November 1990. It accepted elements of two of the Committee's specific recommendations, committing the government to a comprehensive review of federal legislation and a 1991 post-census survey of people with disabilities. According to officials of Statistics Canada, the scope of this survey will be reduced from that carried out in 1986. The government also responded to the Committee's call for an effective mechanism to spur and coordinate action; it made a commitment to establish a coordinating committee of Deputy Ministers.

On 10 December 1990, the Committee tabled its fourth report, *Unanswered Questions: The Government's Response to a Consensus for Action*. This report contained no new recommendations but consisted of an analysis of the November *Response*. It set a potential precedent for how standing committees may deal with responses to their reports by identifying important respects in which the government's response was not truly comprehensive and by asking for clarification.

The response to *Unanswered Questions* was tabled on 13 May 1991. It outlined the tasks involved in the comprehensive review of legislation and the work of the committee of deputy ministers. It set the fall of 1991 as a date for putting together a legislative package. As a result of the Standing Committee's reports, the government announced the National Strategy for the Integration of Persons with Disabilities (see earlier section).

During May 1992, the Standing Committee on Human Rights and the Status of Disabled Persons, presented the first Research Award. The Award, established by the *Centennial Flame Research Award Act* passed by Parliament in March 1991, is given to a person with a disability who will conduct research on the contribution of a disabled person or persons to public life in Canada.

The results of the legislative review recommended by the Standing Committee are contained in Bill C-78, An Act to amend certain Acts with respect to Persons with Disabilities, which received Royal Assent on 18 June 1992 and fulfills promises made in the government response to *A Consensus for Action*. Bill C-78, an omnibus bill, amends six Acts: the *Access to Information Act*, the *Citizenship Act*, the *Criminal Code*, the *Canada Elections Act*, the *National Transportation Act*, and the *Privacy Act*. Prior to the second reading of the bill, the Standing Committee on Human Rights and the Status of Disabled Persons undertook a study of its subject matter.

Specifically, Bill C-78 amends the *Access to Information Act* to ensure that government records are available in an alternative-to-print medium to anyone with a sensory disability. Similarly, the amendments to the *Privacy Act* ensure access to personal information that is held by a government institution. The changes to the *Citizenship Act* are designed to eliminate antiquated and offensive definitions of disability contained in that legislation. With regard to the *Criminal Code*, Bill C-78 responds to the reality that some persons with disabilities

need protection when testifying in court about abuse and assault and gives a judge the discretion to allow a complainant with a mental or physical disability to give evidence with respect to certain sexual offences from behind a screen or outside the courtroom. With regard to the *National Transportation Act*, Bill C-78 inserts the words "accessible" and "persons with disabilities" into the Act's declaratory provision to make it clear that an effective national transportation system must be accessible to persons with disabilities.

By far the greatest impact of Bill C-78 is on the *Canada Elections Act*. It guarantees access to any premises related to a federal election, including polling stations, offices of the returning officers and rooms used for the nomination of candidates. Bill C-78 would also establish mobile polling stations, thus making voting easier for persons with a disability who reside in institutions. Although electors could continue to request assistance in marking a ballot paper, the current requirement for an oath attesting to incapacity to vote without assistance is repealed. Templates would also be available to assist an elector to mark a ballot without assistance. These measures apply to any elector who is unable to read or who is disabled. Bill C-78 also authorizes the Chief Electoral Officer to carry out public education and information programs to ensure that the electoral process is better understood, particularly by persons who might have difficulties in exercising their right to vote. In addition, disability-related expenses are no longer to be included in a candidate's election spending limit. This change recognizes that running for public office may incur greater costs for persons with disabilities.

Because Bill C-78 does not contain an exhaustive list of amendments to federal legislation, it is accompanied by a series of proposals known as "parallel actions" that would affect other policies, regulations and programs. One of these involves a commitment to amend the *Immigration Act* (see above). Another is a promise to issue a cabinet directive to the Canadian Radio-television and Telecommunications Commission to order affirmative action to make the broadcasting system more accessible to those who are deaf or hard of hearing. In another parallel action, the government promised that Treasury Board would strengthen and promote its policy on access to information in alternative formats for publicly available government material.

Bill C-78 recognizes the efforts of parliamentarians and disability rights activists towards legislative change that would bring laws in a number of key areas into line with the

spirit of the *Canadian Charter of Rights and Freedoms*. Nonetheless, the advocates pointed out during the hearings of the Standing Committee on Human Rights and the Status of Disabled Persons that the bill implements only a few of the changes they had recommended to the government during the consultations conducted since 1990. In response, the government has indicated that the measures in Bill C-78 represent only a first step in a series of legislative changes.

CHRONOLOGY

- 1971 - United Nations Declaration on the Rights of Mentally Retarded Persons.
- 1973 - United States *Rehabilitation Act* provided protection against discrimination based on physical or mental disability (eight years earlier than similar Canadian legislation).
- 1975 - United Nations Declaration on the Rights of Disabled Persons.
- 1980 - The House of Commons Special Committee on the Disabled and Handicapped was established.
- June 1980 - Canada hosted in Winnipeg the Ninth World Congress of rehabilitation International (a non-governmental federation of organizations carrying out programs for disability prevention and rehabilitation).
- 1981 - International Year of Disabled Persons.
- 1981 - Disability was included as a prohibited ground of discrimination in the *Canadian Charter of Rights* and in the *Canadian Human Rights Act*.
- February 1981 - The *Obstacles* Report of the Special Committee on the Disabled and Handicapped was tabled, containing 130 recommendations.
- June 1982 - *Obstacles Progress Report* (2nd report).
- June 1983 - *Surmounting Obstacles* (3rd report).

- September 1983 - Report of the Task Force of the Ontario Government on Employers and Disabled Persons, (*Linking for Employment*).
- 1983 - A National Policy on Transportation of the Disabled was adopted by Parliament.
- 1984 - Report of the Office des personnes handicapées du Québec, *On Equal Terms*.
- October 1984 - Report of the Commission on Equality in Employment (Abella Report) dealing with employment opportunities for women, Native people, visible minorities and the disabled.
- May 1985 - The Parliamentary Sub-Committee on the Disabled and the Handicapped was established, with Patrick Boyer, M.P. as chairperson.
- October 1985 - The Report of the Parliamentary Committee on Equality Rights (*Equality for All*) was released, containing two chapters and 13 recommendations on people with disabilities.
- 1986 - The Government's response to the Report of the Parliamentary Committee on Equality Rights was released.
- June 1986 - *Employment Equity Act*. This requires certain companies to record how many employees are disabled, Native, members of visible minorities or female, and to track their career progress. Employers' first reports were due on 1 June 1988.
- July 1986 - Statistics Canada began "The Health and Activity Limitation Survey," to be released in May 1988.
- January 1987 - Disability benefits under the CPP were raised by \$150 per month.
- January 1987 - The House of Commons Report of the Task Force on the Disabled and the Handicapped was presented to the Parliamentary Committee.
- April 1987 - The Initial Report of the House of Commons Sub-Committee on the Disabled and the Handicapped (*Challenge: Putting Our House in Order*) was issued.

- June 1987 - The federal government responded to one of the recommendations of the Sub-Committee by establishing a permanent Standing Committee on the Status of Disabled Persons.
- December 1987 - The federal government promised to increase the number of disabled Canadians in the public service in response to the *Challenge Report*.
- 18 April 1988 - Ontario proclaimed amendments to the Human Rights code to provide disabled persons with equal access to public facilities.
- 29 May - 4 June 1988 - First National Access Awareness Week.
- 30 May 1988 - House of Commons Standing Committee on the Status of Disabled Persons held a Parliamentary Forum on Employment.
- 31 May 1988 - Statistics Canada released data from the Health and Activity Limitation Survey.
- July 1988 - Amendments were made to the *National Transportation Act* to allow for increased accessibility to federally-regulated transportation for disabled persons.
- 18 August 1988 - The Standing Committee on the Status of Disabled Persons tabled its first report, *No News is Bad News*, which dealt with the treatment of disability by the media.
- 17 October 1988 - The Federal Court struck down the law disqualifying those in mental and psychiatric institutions from voting.
- November 1988 - Advocacy groups laid a complaint to the Canadian Human Rights Commission alleging discrimination by nine of Canada's largest corporations.
- 5 April 1989 - The House of Commons amended its standing orders to create the Standing Committee on Human Rights and the Status of Disabled Persons.
- 18 June 1990 - The Standing Committee on Human Rights and the Status of Disabled Persons tabled its report, *A Consensus for Action*.

- 26 July 1990 - *The Americans with Disabilities Act* became law. It provides for equal opportunity in transportation employment and public accommodation.
- 8 November 1990 - The government released its response to *A Consensus for Action*.
- 10 December 1990 - The Standing Committee on Human Rights and the Status of Disabled Persons tabled its report, *Unanswered Questions*.
- 27 March 1991 - The *Centennial Flame Research Award Act* received Royal Assent.
- 13 May 1991 - The government responded to *Unanswered Questions*.
- 6 September 1991 - The Prime Minister announced \$158 million for a National Strategy for the Integration of Persons with Disabilities.
- 13 December 1991 - The *Criminal Code* was amended to remove provisions for the arbitrary confinement of those found not guilty of a crime by reason of mental disorder.
- 29-30 March 1992 - The House of Commons Standing Committee on Human Rights and the Status of Disabled Persons held a parliamentary forum, *Profitable Choices for Everyone*.
- 22-25 April 1992 - Independence '92, A World Congress on Disability took place in Vancouver.
- 14 May 1992 - The Special Committee on the Review of the Employment Equity Act tabled its report, *A Matter of Fairness*.
- 16 June 1992 - Amendments to the *Immigration Act* were introduced in Parliament.
- 18 June 1992 - Bill C-78, An Act to amend certain Acts with respect to Persons with Disabilities (Bill C-78) received Royal Assent.

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